1870

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 305 58

THE STEAMBOAT "M. BURNS," HER TACKLE, &c., PLAINTIFF IN ERROR,

vs.

JAMES F. REYNOLDS AND JAMES AIKEN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED JANUARY 3, 1866.

SUPREME COURT OF THE UNITED STATES.

No. 391.

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a THE UNTED STATES OF AMERICA:

To JAMES F. REYNOLDS and JAMES AIKEN, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State Missouri, wherein the steamboat M. Burns, her tackle &c., is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David Wagner, presiding judge of the Supreme Court of the State of Missouri, this sixteenth day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

DAVID WAGNER,
Presiding Judge Sup. C't, Mo.

Due service and notice hereof acknowledged this sixteenth day of November, 1867.

AIKEN & CO.
Defendants in Error.
By WOERNER & KEHR,
Their Attys.

Endorsed: The steamboat "M. Burns," plff's in error, *vs.* James F. Reynolds *et al.*, def't in error. Citation.

b UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the Supreme Court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court before you, at October term, A. D. 1867, between the steamboat M. Burns, her tackle, &c., appellant, and James F. Reynolds and James Aiken, respondents and appellees, a manifest error hath happened, to the great damage of the said appellant, the steamboat M. Burns, her tackle &c., as by her complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceeding aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this sixteenth of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued at office in the city of St. Louis, with the seal of the Circuit Court of the United States for the District of Missouri, dated as aforesaid.

[SEAL.]

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri District.

Allowed by—

DAVID WAGNER,
Presiding Judge Sup. Ct. Mo.

STATE OF MISSOURI, *ss*:

I, O. T. Fishback, clerk of the Supreme Court, held at St. Louis, of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States at Washington a full, true, and complete transcript of the record and proceedings in the within entitled cause as fully as the same remains of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this twelfth day of December, A. D. 1867.

[SEAL.]

O. T. FISHBACK, *Clerk.*
Per E. P. McCARTY, *Dp.*

Due notice and service hereof acknowledged this 16th day of November, 1867.

AIKEN & CO.
Defendants in Error.
By WOERNER & KEHR,
Their Atty's.

The steamboat M. Burns, her tackle, pl'ff in error, *vs.* James F. Reynolds *et al.*, def'ts in error. Writ of error.

c STATE OF MISSOURI *ss*:

Be it remembered, that heretofore, to wit, on the fifth day of October, A. D. 1867, there was filed in the office of the clerk of Supreme Court, held at St. Louis, of the State of Missouri, a transcript of the record and proceedings in a certain cause lately pending in the Circuit Court within and for the county of St. Louis, which transcript was in the words and figures following, to wit:

STATE OF MISSOURI *ss*:

Be it remembered that heretofore, to wit, on the fifth day of October, A. D. 1867, there was filed in the office of the clerk of the Supreme Court, held at St. Louis, of the State of Missouri, a transcript of the record and proceedings in a cause lately pending in the Circuit Court for St. Louis county, which transcript was in the words and figures following, to wit:

1 STATE OF MISSOURI, *County of St. Louis ss*:

Be it remembered, that heretofore, to wit, on the 21st day of June, in the year of our Lord one thousand eight hundred and sixty-six, there was filed in the office of the clerk of the St. Louis Circuit Court within and for the county of St. Louis a petition which is in the words and figures following, to wit:

State of Missouri, County of St. Louis, ss., Circuit Court of said county, October term, 1866.

Petition of Morrison & McEnnis.

THOMAS MORRISON & THOMAS MCENNIS, pl'ffs,
against
THE STEAMBOAT "M. BURNS," df't.

2 Plaintiffs, who are partners trading under the name and style of Thomas Morrison & Co., complain of defendant, a steamboat used in navigating the waters of the State of Missouri, and allege that on the twenty-seventh day of October, 1865, and on divers other days thereafter, up to and including the 5th day of June, 1866, the defendant became indebted to plaintiff, partners as aforesaid, in the sum of thirteen hundred and thirty-seven $\frac{92}{100}$ dollars upon an open running account for stores and supplies sold and delivered by plaintiffs to defendant for the use of said defendant, the particulars of which account with the dates and prices will more fully appear by reference to the bill of items herewith filed marked, "Exhibit A," and made part of this complaint; that said boat is owned by the St. Louis, Cario & Johnsonville Packet Company, and said demand accrued on account of said boat; that said stores and supplies were purchased by the agent of defendant at the dates and prices in said exhibit mentioned, the last items therein being sold and delivered on the said 5th
3 day of June, 1866.

By reason of the premises are entitled to and demand judgment with a lien upon said boat for said sum of thirteen hundred and thirty-seven $\frac{92}{100}$ dollars, with interest and cost.

GEO. P. STRONG,
Atty for Pl'ffs.

Thomas Morrison, one of said plaintiffs, being duly sworn, says he believes the foregoing complaint and the matters therein, and the account herewith filed, to be correct and true as stated, and that the sum of thirteen hundred and thirty-seven 92-100 as justly due plaintiff, after allowing all just credits and set-offs for stores and supplies furnished by plaintiffs for the use of said boat.

THOS MORRISON.

Sworn to and subscribed before me on this 21st day of June, 1866.
[SEAL.] GEO. CENTER BROWN,
Notary Public.

And together with the said petition the following bond was filed to wit:

Indemnifying bond.

Know all men by these presents that we, Thomas Morrison'
4 as principal, and Henry C. Yeager, as security, are indebted to the State of State of Missouri in the sum of twenty-eight hundred dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at St. Louis this twenty-first day of June, eighteen hundred and sixty-six.

The condition of the above obligation is such, that whereas, Thos. Morrison & Thos. F. McEnnis, partners under the name of Thos. Morrison & Co., are about to institute a suit in the St. Louis Circuit Court by attachment against the steamboat M. Burns defendant, for the sum of thirteeen hundred and thirty-seven 92-100 dollars.

Now, if the plaintiffs shall prosecute their suit with effect, or pay all damages that may accrue to the boat or vessel or the owners or officers thereof by reason of said attachment or any process or proceeding in said suit, then this obligation to be void, otherwise to remain in full force.

[SEAL.] THOS. MORRISON.
[SEAL.] HENRY C. YEAGER.

Approved June 21st, 1866.

F. A. H. SCHEIDER, *Cl'k.*

Whereupon, on the same day, to wit, on the 21st day of June,
5 A. D. 1866, the following warrant was issued, to wit:

Warrant.

STATE OF MISSOURI,
County of St. Louis, ss:

To the sheriff of St. Louis County, greeting:

Whereas, Thomas Morrison and Thomas McEnnis have this day filed in the office of the clerk of the Circuit Court for the county aforesaid their complaint in writing, stating that they have a demand against the steamboat M. Burns, for the sum of thirteen hundred and thirty-seven dollars and 92 cents, which accrued against said boat on account of the agent thereof, as in said complaint hereto annexed is set forth in all its particulars, and which sum of said thirteen hundred and thirty-seven dollars and 92 cents is the sum sworn to in said complaint. These are therefore to authorize and direct you forthwith to seize the said steamboat M. Burns, with her tackle, apparel and furniture, or so much thereof as will be sufficient to pay said sum of thirteen hundred and thirty-seven dollars and 92 cents, with all costs, and detain her until discharged by due course of law; and how you shall execute this warrant make return to our said court on
6 the first day of the next term thereof, to be begun and held at the city of St. Louis, within and for the county aforesaid, on

the first Monday of October next, and have you then and there this writ.

Witness Frank A. H. Schneider, clerk of said court, with the seal thereof hereto affixed, at office, in the city of St. Louis, this 21st day of June, eighteen hundred and sixty-six.

[SEAL.] F. A. H. SCHNEIDER, *Clerk.*

[50 cent U. S. rev. stamp.]

Upon the back of which warrant the sheriff made the following return, to wit:

Sheriff's return.

Executed this writ in the county of St. Louis, on the 21st day of June, 1866, by seizing and taking into my custody the steamboat M. Burns, her machinery, tackle, apparel &c. Fee $1,50.

JOHN C. VOGEL, *Sheriff*,
By JACOB L. WEYAND, *Dept.*

And afterwards, on the 30th day of June, 1866, the following application for an order of sale was filed by the sheriff, to wit:

Warrants 137, 148 & 153, to October term, 1866.—Circuit Court St. Louis county.

THOMAS MORRISON *et al.*
vs.
STEAMER M. BURNS.

7 *Sheriff's application for order of sale.*

To the hon. judges of the Circuit Court of St. Louis county:

John C. Vogel, sheriff of St. Louis county, State of Missouri, comes here and represents that, by authority of the above-recited writs, I did, on 21st day of June, 1866, in the county of St. Louis, State of Missouri, seize and take into my custody the steamer M. Burns, her hull, engine, tackel, apparel, and furniture; and more than five days have elapsed since said boat was seized, no bond having been filed for the release of said boat. I therefore respectfully ask that an order of sale be granted to sell said boat, with her tackel, apparel, and furniture.

JOHN C. VOGEL, *Sheriff.*
THEODORE LA BEAUME, *Dep.*

St. Louis, June 30, 1866.

And on the same day the following order was granted, to wit:

Order of sale.

In the matter of the steamboat M. Burns.

John C. Vogel, esquire, sheriff of St. Louis county, filed a statement from which it appears that he has seized the steamboat M.

Burns, under two several warrants therein named, and that
8 five days has elapsed since said seizure, and no person has given bond for the release of said boat, it is therefore ordered that said sheriff proceed to sell said boat, according to law, for cash, to the highest bidder, first giving twenty days' notice of the time and place of sale by publication, according to law, in newspapers printed in the city of Sr. Louis.

And said boat being sold according to the above order, the following account was, on day of , filed against her, in the words and figures following, to wit:

Circuit Court of St. Louis county.

Report of sale by sheriff.

THOMAS MORRISON *et al.*, *vs.* STEAMER M. BURNS. } Warrants Nos. 137, 148, 153 returnable to October term, 1866.

John C. Vogel, sheriff of St. Louis county, State of Missouri, comes here into court, and makes a report of all his acts and proceedings under the order of sale hereto attached, made on the 30th day of June, 1866. Pursuant to said order I did, on the 30th day of June, 1866, cause the personal property attached in the above-entitled case to be advertised in the manner prescribed by law, by
9 advertisements in two newspapers published in the city of St. Louis, State of Missouri, at least 20 days prior to the day of sale hereinafter mentioned, a copy of which advertisement is hereto attached and made part of this report.

And agreeably to said advertisement I did, on Tuesday, the 24th day of July, 1866, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at east front door of the court-house, in the city of St. Louis, State of Missouri, sell all the personal property, &c., being the steamer M. Burns, described in said advertisement, to the highest bidder, for cash, for the sum of five thousand nine hundred dollars, ($5,900 00.) All which is respectfully submitted to the court for approval.

JOHN C. VOGEL, *Sheriff.*
THEODORE LA BEAUME, *D.*

St. Louis, July 25, 1866.

Charges.

Executing order of court and report of sale	5 75
Advertising in two papers	41 70
Commission on sales	125 50
Cash watchman's fees	102 00
Towing boat and labor	27 50
	$302 50

10 Which copy of advertisement is in the words and figures following, to wit:

Circuit Court of St. Louis county.

Advertisement referred to in sh'ff's r'p't.—Sheriff's sale.

THOMAS MORRISON *et al.* *vs.* STEAMER M. BURNS. } Warrants Nos. 137, 148, and 153 to October term, 1866.

By virtue and authority of an order of sale issued from the clerk's office of the Circuit Court of St. Louis county in the above-entitled cause, and to me directed, I will, on Tuesday, 24th day of July, 1866, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at the east front door of the court-house, in the city of St. Louis, State of Missouri, sell at public vendue to the highest bidder, for cash, the steamer M. Burns, her hull, engine, tackel, apparel, and furniture.

JOHN C. VOGEL, *Sheriff.*

St. Louis, June 30, 1866.

Jy 19t—94

And afterwards, on the 4th day of August, 1866, the following order was made in said cause, to wit:

Order to give notice to creditors.

In the matter of the steamboats M. Burns, Grey Eagle, McC. Porter, Leonora, Fanny Barker, North Alabama, C. J. Caffrey, Silver Wave, Louisa, and Milbrey.

11 The sheriff of Saint Louis county having made report of the sale of the steamboats M. Burns, Grey Eagle, McC. Porter, Leonora, Laura, Fanny Barker, North Alabama, C. J. Caffrey, Silver Wave, Louisa, and Milbrey, it is ordered that, on the fifth day of October, eighteen hundred and sixty-six, all creditors of the said boats having a lien upon the same shall appear and [and] exhibit their demands in this court against said boats; and it is further ordered that the clerk of this court cause notice of said appointment to be given to the creditors of the boats by publication, according to law and the rules of this court; which notice of publication is in the words and figures following, to wit:

In the St. Louis Circuit Court of the June term, 1866.

Notice printed in the Missouri Republican.—Creditors' notice.

In the matter of the steamboats M. Burns, Gray Eagle, McC. Porter, Leonora, Laura, Fanny Barker, North Alabama, C. S. Caffrey, Silver Wave, Louisa, and Milbrey.

In pursuance of an order of the St. Louis Circuit Court, public notice is hereby given to all creditors having a lien or

liens against the said steamboats M. Burns, Gray Eagle,
12 McC. Porter, Leonora, Laura, Fanny Barker, North Alabama, C. J. Caffrey, Silver Wave, Louisa, and Milbrey, under the act entitled "An act concerning boats or vessels," approved November 29, 1855, that they are hereby required to file with the clerk of said court, on the 4th day of October next, at the court-house, in the city and county of St. Louis, their demands against the said steamboats, and on the succeeding day establish the validity thereof under the provisions of the said act, at which time and place all parties in interest may appear and be heard before said court.

In testimony whereof, I hereto set my hand and affix the seal of said court, at office in the city of St. Louis, this 21st day of August, A. D. 1866.

F. A. H. SCHNEIDER, *Clerk.*

Affidavit.

STATE OF MISSOURI, *County of St. Louis.*

Personally appeared before the undersigned, a notary public within and for the said county of St. Louis, John Knapp,
13 who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "Missouri Republican," a newspaper printed and published in the city and county of St. Louis, State of Missouri, of which he is printer, for five times, the first insertion being on the 24th day of August, 1866, and the last insertion on the twenty-first day of September, 1866, as follows:

In No. 202, Aug. 24, 1866.
" 208, " 31, "
" 214, Sept. 7, "
" 220, " 14, "
" 226, " 21, "

JOHN KNAPP.

Sworn to and subscribed before me, this twenty-first day of September, 1866.

In testimony whereof, I have hereunto set my hand and affixed the notarial seal, at office, in St. Louis, the day and year last above written.

[SEAL.]

D. G. JONES,
Notary Public, St. Louis County, Mo.

Printer's fee.....
Affidavit of..... 50

$16 85

Notice.—Printed in the Westliche Post.

"Creditor's notice."—In the matter of steamboats M. Burns, Grey Eagle, McC. Porter, Leonora, Laura, Fanny Barker,
14 North Alabama, C. J. Caffrey, Silver Wave, Louisa, and Milbrey, in the St. Louis Circuit Court of the June term, 1866.

In pursuance of an order of the St. Louis Circuit Court, public notice is hereby given to all creditors having a lien or liens against the said steamboats M. Burns, Gray Eagle, McC. Porter, Leonore, Laura, Fanny Baker, North Alabama, C. J. Caffrey, Silver Wave, Laura, and Milbrey, under the act entitled "An act concerning boats or vessels," approved November 29, 1855, that they are hereby required to file with the clerk of said court, on the 4th day of October next, at the court-house, in the city and county of St. Louis, their demands against the said steamboats, and on the succeeding day establish the validity thereof under the provisions of the said act, at which time and place all parties in interest may appear and be heard before said court.

In testimony whereof, I hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this 21st day of August, A. D. 1866.

15 F. A. H. SCHNEIDER, *Clerk.*

Affidavit.

STATE OF MISSOURI, *County of St. Louis, ss:*

Personally appeared before me, the undersigned, a notary public within and for the county aforesaid, Theodore Plate, of the publishers of the Westliche Post, of the State and county aforesaid, who, being duly sworn, deposeth and sayeth that the annexed advertisement was published in the Westliche Post the time below specified, on the following days and in the following numbers, viz:

August 22, 1866, No. 196; August 23, 1866, No. 197; August 24, 1866, No. 198; August 25, 1866, No. 199; August 26, 1866, No. 34; August 27, 1866, No. 200; August 28, 1866, No. 201; August 29, 1866, No. 202; August 30, 1866, No. 203; August 31, 1866, No. 204; Sept'b'r 1, 1866, No. 205; Sept'b'r 2, 1866, No. 35; Sept'b'r 3, 1866, No. 206; Sept'b'r 4, 1866, No. 207; Sept'b'r 5, 1866, No. 208; Sept'b'r 6, 1866, No. 209; Sept'b'r 7, 1866, No. 210; Sept'b'r 8, 1866, No. 211; Sept'b'r 9, 1866, No. 36; Sept'b'r 10, 1866, No. 212; Sept'b'r 11, 1866, No. 213; Sept'b'r 12, 1866, No. 214; Sept'b'r 13, 1866, No. 215; Sept'b'r 14, 1866, No.
16 216; Sept'b'r 15, 1866, No. 217; Sept'b'r 16, 1866, No. 37; Sept'b'r 17, 1866, No. 218; Sept. 18, 1866, No. 219; Sept. 19, 1866, No. 220; Sept. 20, No. 221.

THEODORE PLATE.

Sworn to and subscribed before the undersigned this twenty-seventh day of September, 1867.

[SEAL.] ARTHUR OLSHAUSEN, *Notary Public.*

[5-c. rev. stamp.]

Printer's fee; affidavit, $. Rec'd payment.

And afterwards, on the 4th day of October, 1866, Aiken & Co. filed their demand, which is in the words and figures following, to wit:

Claim of Aiken & Co.

Steamboat M. Burns bought of Aiken & Co.:

1866.		
Feb'y 10.	604 lbs. meats, @ 12	$72 48
24.	631 lbs. do. @ 12	75 72
	50 lbs. pickled pork, @ 20	10 00
	1 tripe	1 00
March 6.	12 lbs. meats, @ 12	1 44
7.	590 lbs. do. @ 12	70 80
	30 lbs. pickled pork, @ 20	6 00
	1 tripe	1 00
March 22.	58 lbs. meats, @ 12	6 96
23.	435 lbs. do. @ 12	52 20
23.	1 tripe	1 00
		$298 60

17 *Note of April.*

STATE OF MISSOURI, *County of St. Louis:*

James M. Douglass, being duly sworn, on his oath, says, that he is, and for the last eight months has been, a clerk and book-keeper of the firm of Aiken & Co.; that said firm is, and was at the date, within mentioned, composed of James S. Reynolds and James Aiken; that said steamboat M. Burns is indebted to the firm in the sum of two hundred and ninety-eight 60-100 dollars, after allowing all just credits and set-offs for stores and supplies furnished said steamboat at the request of her authorized agent, on whose account said demand accrued at St. Louis, Missouri, while said boat was navigating the waters of this State; that the within account is a true statement of said demand in all its particulars; and that all said items were sold, furnished, and delivered to said boat by said firm, and that the prices charged are reasonable.

JAMES M. DOUGLASS.

Sworn to and subscribed before me this 4th day of October, 1866.

18 SEAL.] J. P. COLBY,
Notary Public, St. Louis Co.

Steamboat M. Burns bought of Aiken & Co.:

1866.		
April 2.	19 lbs. meats, 12	$2 28
2.	1 pig	3 00
3.	25 lbs. meat, 12	3 00

4.	820 lbs. meats, 12	98 40
4.	20 lbs. p. pork, 20	4 00
4.	1 tripe	1 00
13.	35 lbs. meats, 12	4 20
14.	95 lbs. meats, 12	11 40
16.	94 lbs. meats, 12	11 28
17.	693 lbs. meats, 12	83 16
17.	50 lbs. p. pork, 20	10 00
17.	6 sets brains, 12½	75
17.	1 tripe	1 00
17.	1 calve's head	1 50
		234 97
		298 60
		$533 57

Note of May.

STATE OF MISSOURI, *County of St. Louis*:

19 James M. Douglass, being duly sworn, on his oath says, that he is, and for eight months last past has been, a clerk and book-keeper of the firm of Aiken & Co.; that said firm is, and was at the dates within mentioned, composed of James S. Reynolds and James Aiken; that said steamboat M. Burns is indebted to said firm in the sum of two hundred and thirty-four 97-100 dollars, after allowing all just credits and set-offs for stores and supplies furnished said steamboat at the request of her authorized agent, on whose account said demand accrued at St. Louis, Missouri, while said boat was navigating the waters of this State; that the within account is a true statement of said demand in all its particulars; and that all said items were sold, furnished, and delivered to said boat by said firm, and that the prices charged are reasonable.

JAMES M. DOUGLASS.

Sworn to and subscribed before me this 4th day of October, 1866.
[SEAL.] J. P. COLBY,
Notary Public, St. Louis Co.

20 And afterwards, at the April term for the year 1867, the the following further proceedings were had in said cause, to wit:

Claim allowed.

In the matter of the steamboat "M. Burns."

WEDNESDAY, *May 29th*, 1867.

Now, at the day, comes the defendant, by its attorney, and the claimants, Aiken & Co., come by their attorneys, and said claimants submit to the court their demand against said boat, and the same be-

ing fully proven and the validity thereof established, the court doth award judgment in favor of said claimants for the sum of five hundred and fifty-four 72-100 dollars, and finds that their demand belongs to the second class of liens against said boat.

Motion for a new trial continued.

In the matter of the steamboat "M. Burns."

FRIDAY, *May* 31*st*, 1867.

The court orders that the defendant's motions for a new trial of the claims of Morrison & McEnnis and Aiken & Co. be continued until the next term.

And at the June term of said court for said year, the follow-
21 ing further proceedings were had, to wit:

Motion for a new trial overruled.

In the matter of the steamboat "M. Burnes."

SATURDAY, *June* 8*th*, 1867.

The court, having heard and fully considered the defendant's motions for a new trial of the claims of Morrison & McEnnis and Aiken & Co. herein, doth order that said motions be severally overruled.

Bill of exceptions filed and appeal allowed to gen. term.

In the matter of the steamboat "M. Burnes."

SATURDAY, *June* 15*th*, 1867.

The defendant comes, by its attorney, and files a bill of exceptions in the matter of the claim of Aiken & Co., and on its motion, by attorney, an appeal is allowed it to the general term from the decision herein rendered; which bill of exceptions is in the words and figures following, to wit:

In the St. Louis Circuit Court.

Bill of exceptions at special term.

AIKEN & CO., plaintiffs,
vs.
THE STEAMBOAT M. BURNES, defendant.

ST. LOUIS COUNTY, *ss:*

Be it remembered that on the trial of this case (which was one arising on an account filed by the plaintiffs, pursuant to notice
22 given by this court under the nineteenth section of chapter 20, entitled "An act concerning boats or vessels" of the revised statutes of Missouri of 1855, for which reason there are no pleadings in the case, the cause being heard summarily under sec. 20 of said act on the account as filed,) the plaintiffs proved their account, and that the

supplies were furnished to the defendant, the steamboat M. Burnes, at the dates, in the quantities, and at the prices stated on the order of the duly authorized agent of the boat, that the balance as claimed was due. The evidence showed that these supplies were furnished and delivered at St. Louis where the boat was enrolled, and where most of the owners resided, and whilst said boat was at St. Louis, that the defendant was employed in the passenger and freight trade between St. Louis in Missouri, Cairo in Illinois, Johnsonville in Tennessee, and other parts and places in different States, and was navigating the Mississippi, Ohio, and Tennessee rivers, at the times at which these supplies were furnished, and when the boat was seized in the original cases, by which she was brought into this court; that the goods were furnished on the faith of the lien, as given by
23 the statutes as well as on the personal credit of the owners, and that the plaintiffs had charged them in the books of their firm to the boat, and had looked to the boat as well as its owners for payment.

The defendant offered and read in evidence the following papers and records, viz:

1st. The warrant of arrest in the original case, on which this boat was seized, which is of the tenor following: (See page 3.)=(5 this transcript.)

2nd. The sheriff's return on the said warrant, which is of the tenor following: (See page 4.)=(Page 6 of this transcript.)

3d. The application made to the court for the order of sale of the st'b M. Burnes, which is in the words and figures following: (See page 4 (7.)

4th. The order of this court for the sale of said boat, which is as follows: (See page 5 (7.)

5th. The advertisement of the sheriff of the sale of said boat, which is as follows: (See page 7 (10.)

6th. The return of the sheriff, upon the order of sale of said boat, which is as follows: (See page 5 (8.)

24 7th. The order of the court appointing a time for the creditors to file their demands, which is as follows: (See page 7 (10.)

8. The notice to creditors to appear and prove their demands, being the notice pursuant to which pt'ffs filed their demands as published in the newspapers, which is as follows: (See page 8 (11.)

9th. The entry in the record showing that the various parties appeared before the court, and had their demands heard and adjudicated.

In the matter of the steamboat M. Burnes.

Hearing of claims.

NOVEMBER 10*th*, 1866.

This being the day to which the hearing of claims against the steamboat "M. Burnes" had been continued, and it being proven to the court from the affidavits herein that the notice to creditors had been duly published in conformity with the order made herein,

the following named persons come and exhibit their demands to the court; and the same being by them respectively submitted to the court, and being fully proven, and the validity of the same
25 being established, the court doth award judgment in favor of said claimants as follows, and finds that their demands belong to the first class of liens against said boat, viz:

Charles Walter, $5,00; John Mengens, $5,00; Jacob Geig, $5 00; Frank Kintzler, $5 00; John Holland, $5 00; Michael Sutter, jr., $12 00; Nicholas Bauer, $5 00; Jacob Stemmbrenner, $5 00; John Blass, $5 00; John Plumer, $5 00; Charles Hoffman, $5 00; Henry Schauff, $5 00; Jacob Mueller, $5 00; George Mueller, $3 50; Michael Schmitt, $5 00; George Reith, $3 50; Fred. Hilbuth, $5 00; John Mathias, $5 00; Thomas McCantles, $5 00; Frank Hoffstartler, $5 00; Charles Seiffatt, $5 00; Thomas D. Dunnill, $25 00; John Keller, $5 00; Jacob Lunde, $3 50; B. Tiedeman, $3 50; Nicholas
26 Bredenger, $5 00; Joseph Bohr, $5 00; Fred. Retmeyer, $5 00.

And thereupon the following named persons appear, by their respective attorneys, and exhibit their demands; and the same being by them respectively submitted to the court, and being fully proven, and the validity of the same established, the court doth award judgment in favor of said claimants as follows, and finds that their demands belong to the second class of liens against said boat, viz:

Joseph Garneau & Co., $87 87; George Wharton & Co., $50 80; McCarr & Teasdale, $27 30; Hezel & Teasdale, $7 90; John & Edward Ring, $84 90; James Aiken & James S. Reynolds, $208 76; Joseph Gartside, $175 91; R. C. McCord & Co., $199 00; John E. Oxley & Co., $98 00; St. Louis Tarpaulin Co., $12 75; J. W. Kingsworth, $43 00; Kelly & Langwith, $32 54; Heniecke & Estel, $36 05; R. C. Van Duzen & Co., $73 47; James A. Jackson, *et al.*,
27 $277 04; R. C. McCord, jr., $13 50; August Nedderhut, $127 80; Morris & John Hezel, $22 35; John T. Tillay & Co., $91 80; Boos & Bonsack, $30 62; John Cummings, $22 00; H. & A. Menown, $53 60; B. S. Bell, $15 10; Raynor, Webb & Co., $19 85; George Frederick, $45 75; Gordon & Griffin, $30 64; Kupferle & Rowell, $17 82; Louis Finkman, $81 30; R. C. McCord, $48 85.

And the court doth find that the following claim belongs to the fourth class of liens against said boat, and doth allow judgment, as follows:

In favor of J. B. Beutchler for..... $50 00

And thereupon the claims of the press association and Aiken & Co. are submitted to the court, and the court being fully advised of, and concerning the same, doth reject said claims, and order that the said claimants pay the costs accrued therein. And thereupon the claims of Gibbons & Epperson, Morrison & McEnnis, and Cavender & Rowse are submitted to the court, but the court, not being fully
28 advised of and concerning the same takes time to consider thereof.

It was further admitted in evidence that such of the demands as were allowed by the court were to be paid out of the fund proceeding from the sale of the steamboat "M. Burnes", according to

the usual course of proceedings where boats are sold and claims allowed under the boat and vessel act of this State.

This was all the evidence in the case.

The defendant thereupon asked the court to declare the law to be as contained in the following instructions:

Defendant's instructions refused.

The defendant asks the court to declare the law to be that this court has no jurisdiction of the present suit, and that under the Constitution and laws of the United States, and particularly the 9th section of the judiciary act of 1789, the jurisdiction of causes of action such as that here sued on is vested exclusively in the courts of the United States."

Which the court refused to do and refused to give said instruction, to which ruling of the court the defendant at the time duly excepted.

The court gave judgment for the plaintiff, and allowed
29 their demand, as claimed, as a lien on the second class against the defendant, to which action of the court the defendant at the time duly excepted.

Afterwards, and within four days, the defendant filed his motion for a new trial, which is as follows:

In the St. Louis Circuit Court, April term, 1867.

Motion for a new trial.

AIKEN & Co., plaintiffs,
vs.
STEAMBOAT "M. BURNES," defendant.

Now comes the defendant, through its owner, Adolph Heinecke, and moves the court to set aside the judgment and grant a new trial in said case, on the following grounds:

1st. That the court erred in refusing the instruction asked by the defendant.

2d. That the court erred in declaring the law of the case.

3d. That the court erred in refusing to dismiss the case for want of jurisdiction.

4th. That the court erred in giving judgment for the plaintiffs.

5th. That the judgment is erroneous on its face, as rendered by a court having no jurisdiction to give or render any such judgment.

RANKIN & HAYDEN, *for Def't.*

Which motion was in due time overruled, to which action
30 of the court in overruling said motion the defendant at the time duly excepted.

Afterwards, and on a report being duly made and filed in the court showing the condition of the fund proceeding from the sale of the steamboat "M. Burnes" the court ordered that the sheriff pay

to the plaintiffs the amount of their judgment as above given out of said fund, to which order of the court the defendant at the time duly excepted, and now presents this its bill of exceptions which he prays may be signed and sealed by the court and made part of the record, which is accordingly done.

SAM'L REBER.

And afterwards, to wit, at a general term of said court for the year 1867, the following further proceedings were had in said cause:

Judgment affirmed at gen. term.

AIKEN & CO.
vs.
ST. BT. M. BURNES.

FRIDAY, *June 21st*, 1867.

Now come the parties, by their respective attorneys, and the court being now sufficiently advised of and concerning the
31 premises, doth consider and adjudge that the judgment and final order rendered herein by the court, at special term, be in all things affirmed and stand in full force and effect, and that the defendant pay the costs of this proceeding.

Bill of exceptions and affidavit for an appeal.—Filed.—Appeal allowed, and appeal bond appr'd.

AIKEN & CO.
vs.
ST. BT. M. BURNES.

TUESDAY, *June 25th*, 1867.

Now comes the defendant, by attorney, and files a bill of exceptions herein, and also an affidavit for an appeal, and on his motion an appeal is allowed to the Supreme Court from the judgment herein rendered. He thereupon filed an appeal bond, which is approved by the court.

Which bill of exceptions, affidavit for an appeal, and appeal bond, are in the words and figures following, to wit:

In the St. Louis Circuit Court, St. Louis county, general term.

Bill of exceptions at gen. term.

AIKEN & CO.
vs.
STEAMBOAT M. BURNES.

Be it remembered, that on the trial of this cause, at general term, the case was heard on appeal from the judgment and order of
32 this court, at special term, in court-room No. 2, on the case

presented by the bill of exceptions, sent up from said special term, which bill of exceptions was in the words and figures following, to wit:

(See page 15-21.)

And the court, at general term, having duly considered the case and questions presented by the said bill of exceptions, ordered and adjudged that the judgment and order of the court at special term be in all things affirmed, to which judgment and decision the appellant at the time duly excepted, and now presents this its bill of exceptions, which it prays may be signed and sealed by the court and made a part of the record herein, which is accordingly done.

SAM'L REBER, *P. P. J. F.*

In the St. Louis Circuit Court, St. Louis co., June term, A. D. 1867.

Affidavit for an appeal to Supreme Court.

AIKEN & Co.
vs.
STEAMBOAT "M. BURNES,"
defendant and appellant.

Adolph Heinecke, owner of said steamboat M. Burnes,
33 and for and on behalf of said boat, being duly sworn, on his oath says that the appeal in this case is not made for vexation or delay, but because the affiant believes appellant is aggrieved by the judgment or decision of the court herein.

ADOLPH HEINECKE.

Sworn to and subscribed to before me, June 25th, 1867.

F. A. H. SCHNEIDER, *Cl'k.*

Appeal Bond.

Know all men by these presents that we, Adolph Heinecke, as principal, and Jacob Tamm, and George Gehrke, as sureties, are held and firmly bound unto Aiken & Co., composed of James Aiken and James F. Reynolds, in the sum of twelve hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at St. Louis, this twenty-fifth day of June, A. D. 1867.

The condition of the above obligation is such, that whereas the steamboat M. Burns, by Adolph Heinecke, owner of said boat, has appealed from the judgment rendered against her in favor of Aiken & Co., composed, as aforesaid, in the St. Louis Circuit
34 Court, for the sum of five hundred and fifty-four dollars and seventy-two cents, together with costs.

Now, if the said appellant will prosecute her appeal with due diligence to a decision in the Supreme Court, and shall perform such judgment as shall be given by the Supreme Court, and such as the

Supreme Court may direct the St. Louis Circuit Court to give, and if the judgment, or any part thereof, be affirmed, will comply with and perform the same so far as it may be affirmed, and pay all damages and costs which may be awarded against her by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force and effect.

[SEAL.] ADOLPH HEINECKE.
[SEAL.] JACOB TAMM.
[SEAL.] GEORGE GEHRKE.

Approved in open court, June 25th, 1867.
F. A. H. SCHEIDER, *Cl'k.*

Certificate.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Frank A. H. Schneider, clerk of the St. Louis Circuit Court, within and for the county of St. Louis, hereby certify that the foregoing to be a true copy in the above-entitled cause, from
35 the record and papers, as the same remains now on file in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court, this 28th day of September, A. D. 1867.

———— ————, *Clerk.*

And afterwards, to wit, at the October term, 1877, of said Supreme Court, the following further proceedings were had in said cause, to wit:

Appellant's statement and brief filed.

AIKEN & COMPANY, respondents,
vs.
STEAMBOAT M. BURNES, appellant.

WEDNESDAY, *November* 6, 1867.

And afterwards, at the same term of said Supreme Court, the following proceedings were had:

Respondents brief filed.

AIKEN & COMPANY, respondent,
vs.
STEAMBOAT M. BURNES, appellant.

THURSDAY, *November* 7, 1867.

And afterwards, at the same term of said Supreme Court,
36 the following proceedings were had in this cause:

Submission.

AIKEN & COMPANY, respondents,
vs.
STEAMBOAT M. BURNES, appellant.

FRIDAY, *November* 8, 1867.

Now again come the parties aforesaid, by their respective attorneys, and submit this cause to the court, upon their briefs filed herein.

And afterwards, at the same term of said Supreme Court, the following judgment was rendered in said cause, to wit:

Appeal from St. Louis Circuit Court.—Judgment Circuit Court affirmed.

AIKEN & COMPANY, respondents,
vs.
STEAMBOAT M. BURNES, appellant.

MONDAY, *November* 11, 1867.

Now again come the parties aforesaid, by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said St. Louis Circuit Court be in all things affirmed, and stand in full force and effect, and that the said respondents
37 recover of the said appellant their costs and charges herein expended.

Opinion filed.

And afterwards, at the same term of said Supreme Court, to wit, on the 18th day of November, A. D. 1867, the appellant appeared in court by attorney and filed a bond in this cause, which bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Adolph Heinecke, Chas. H. Teichmann, and Jacob Tamm, are held and firmly bound unto James T. Reynolds and James Aiken, in the full and just sum of twenty-five hundred dollars, to be paid to the said James T. Reynolds and James Aiken, heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixteenth day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas lately, at the October term, 1867, of the Supreme Court of the State of Missouri, in a suit depending in said court be-
38 tween the said James T. Reynolds and James Aiken, appellees, and the steamboat "M. Burnes," (Adolph Heinecke, owner,) appellant, judgment was rendered against the said steamboat

"M. Burnes," &c., appellant, and the said appellant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said James T. Teasdale and James Aiken, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said appellant shall prosecute said writ to effect and answer all damages and costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] ADOLPH HEINECKE.
[SEAL.] CHAS. H. TEICHMANN.
[SEAL.] JACOB TAMM.

Sealed and delivered in presence of—
JNO. H. RANKIN.

Approved by

DAVID WAGNER,
Presiding Judge, Sup. Ct., Mo.

STATE OF MISSOURI:

I, O. T. Fishback, clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify the above and foregoing to a full, true, and complete transcript of the record and proceedings in the above-entitled cause, as fully as the same remains of record and on file in my office.

Witness my hand with the seal of said court hereto affixed at office, in the city of St. Louis, this thirteenth day of December, A. D. 1867.

[SEAL.] O. T. FISHBACK, *Clerk.*
Per E. P. McCARTY, *Dp.*